

SPEECH OF HON. JOHN L. DAWSON,
OF PENNSYLVANIA, ON THE
RECONSTRUCTION OF THE UNION

by John Littleton Dawson

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SPEECH

OF

HON. JOHN L. DAWSON,

OF PENNSYLVANIA,

ON

THE RECONSTRUCTION OF THE UNION;

DELIVERED

IN THE HOUSE OF REPRESENTATIVES, JANUARY 16, 1867.

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RECONSTRUCTION.

The House having under consideration the bill (H. R. No. 543, to provide for restoring to the States lately in insurrection their full political rights—

Mr. DAWSON said:

Mr. SPEAKER: I have watched the proceedings of this body with deep interest. No one has been a more attentive listener or more carefully reflected upon the subjects which have engaged its attention. Feeling as I have done from the first the magnitude and imminence of the danger which rested and continues to rest upon the future of the country, and oppressed as I still am with anxiety for her fate, it is but an obvious suggestion of duty to contribute whatever of ability and influence I may possess toward a solution of the difficulties which yet, with much obstinacy, obstruct a return of this great land to the quiet, the harmony, and progressive prosperity which only a decade ago rendered her the pride and envy of the civilized world.

The war from which we have emerged was waged for the restoration of the Union. It has been successful in the suppression of the rebellion, but the result has not been the restoration of the Union. There is conquest, but there is no Union. I desire, sir, to inquire in all sincerity why this lamentable duality of conditions still obtains in reference to a great people, which nature and the wisdom of revered legislators intended to be one. My wish and purpose are to do this in a spirit wholly apart from and above that of the partisan. It

must be the impulse of every heart not unworthy a citizen of America to let party and platform sink together in the dust in the presence of great questions affecting vitally the safety of his country. I shall exercise the privilege, which I have always done upon this floor, of criticising with freedom and decision where I feel compelled to dissent, and with equal boldness shall indicate what I think is to be done in the trying exigency of our political and social relations to bring back that internal harmony without which durable peace and union are but fond aspirations or deceitful illusions.

The course of duty is not, I apprehend, so difficult to discover if we do not willfully shut our eyes to the principles and facts which heretofore all have acknowledged as fundamental and governing; and if we do not elevate and magnify into primary importance those which in their nature are secondary and of comparative insignificance. We have emerged from a great civil war; the greatest, indeed, of any age, and we have in consequence a somewhat anomalous state of facts to deal with.

The Federal Union, which was the common Government of all the States and their respective populations, was disturbed by an attempt at disruption by a portion of the parties to it. The project of secession failed; but the relations which the seceding States since the war sustain to those adhering to the Union have been the subject of very conflicting theories. On the

one hand, it is maintained that by the act of rebellion the States which engaged in it have forfeited all their rights, State and individual; they are without any valid governments save such as the legislative branch of the Government may choose to extend to them, and they exist only by the mercy of the conquerors. This is the theory of the Republican party, and has given rise to the measures upon this subject of the last and present Congress. On the other hand, it is claimed that the attempt at secession having been suppressed by the physical power of the Government, the States, whose authority was usurped by the parties to the movement, have never at any time been out of the Union; and that having once expressed their acquiescence in the result of the contest and renewed their allegiance to the Union they are at the same time restored to all the rights and duties of the adhering States. This is the doctrine which is held by the Executive, and has given shape to the presidential policy.

Recognizing, as I do, in the presidential theory the true solution of our difficulties, I will state briefly the reasons which move me to this conclusion. It is a fact that the close of the Revolution found the people of these States in the condition of distinct sovereignties. The Articles of Confederation were but a league of these. The Constitution of 1789 differed from the old in this: that it invested the common Government with certain attributes of sovereignty which had before belonged exclusively to the States in their separate capacities. As to these powers, distinctly specified in the common charter, allegiance was due to the Federal Government. As to all other powers not specified, sovereignty was still reserved to the States. The Federal Government was as supreme as to the granted powers as the States were as to the reserved, both governments proceeding directly from the people—the true source of power in a democratic government. The General Government was Federal, (as its name implies,) inasmuch as it was formed by the accession of the several populations as separate and independent States; but it was not Federal in the sense of a league, as the Government of the old Confederation had been. That was formed by the States in their corporate capacities, and affected the States only as

corporations. The new Government was created by the act of the people as individuals, ratifying by their representatives in conventions; and its powers were to be exercised directly upon individuals. The new government was “national” within the range of its powers, since it was the union of the sovereign powers of the States for the specified objects. State sovereignty no longer existed; but State rights—the exercise of the portion of sovereignty reserved—remained in full force. The difference between the two constitutions was, that by the one the States retained their full sovereignty; by the other they did not.

In cases of Federal or State encroachment the constituted arbiter was the Supreme Court; and whenever popular passion should become too strong to wait for its decrees or regard them when promulgated the contest would necessarily become one of physical force. If, in the opinion of the populations of the States, the right of local self-government were not duly protected or were infringed upon by the common Government of limited powers, duty to the local governments might counsel resistance, and if the Federal authority were equally tenacious it is obvious that an issue would be raised which could only be decided by an appeal to arms. Now, this is precisely what has happened in our recent history. The southern populations, apprehending that by the election of Mr. Lincoln upon a platform which they regarded as aggressive to their local rights, and which purposed the exclusion of southern communities from the equal benefits contemplated by the common Government, felt called upon to assume their own protection by a new confederacy. This necessarily brought on with the common Government, already established, which yet disclaimed any intention of exceeding its defined powers, and which felt impelled to every effort for self-preservation, since it was a Government deliberately adopted by all the people, whose consent was not to be withdrawn upon the mere apprehension of injury—this brought on, I say, with the common Government an issue of force. How this has been decided; with what a prodigious exhibition of energy by the respective parties; with what prodigal waste of blood and of life, what darkened homes, what an accumulation of the bur-

dens of the people, what disruption of kindred ties, and what engendered bitterness; we are all, alas! but too painfully familiar. I have more than once, from my place here, as well as elsewhere, declared my conviction that the South grievously erred in its choice of a remedy for the evils of which it complained. I of course acknowledge the right of revolution for adequate cause, but that cause I was unable to find in the facts immediately antecedent to the rebellion. The doctrines and policy of the Republican party I did think aggressive upon southern rights, but I regarded them but as *brutum fulmen*, while the South held an all-sufficient curb in a constitutional majority in both Houses of Congress and in the shield of the Constitution always resting over them.

I do not overlook the fact that, contemporaneously with the origin of the Government, there were great differences of opinion among wise and good statesmen as to the relative extent, and in certain contingencies the relative supremacy, of the State and Federal Governments. These differences obtained extensively without reference to section. The Virginia and Kentucky resolutions of 1798 gave prominence to State rights, though doubtless not intended by their authors to authorize and not legitimately authorizing the conclusions which a peculiar school of politicians subsequently drew from them. Those resolutions were believed to announce the true theory of State relations, and as such became fundamental points of Democratic faith as maintained by Jefferson and Madison, and have been constantly upheld since by that party which has shaped the policy of the Government for three fourths of its existence. The practical application of those doctrines to authorize secession was, indeed, first made in New England during the late war with Great Britain. The purpose of seceding was seriously agitated in her State Legislatures, and in all probability would have resulted in open rebellion but for the timely treaty which terminated the war. Secession, the illegitimate offspring of sound principles, was thus for the time baffled in her mistaken aspirations. She was, however, again evoked from her obscurity, a fresh competitor for public favor, by the nullification politicians of South Carolina. A wise policy

of compromise on the part of the Government at that time averted a crisis. Increased plausibility was subsequently given to her pretensions by the genius of Calhoun and other leading statesmen of the South; and unquestionably they had become so extensively received as to lend much support to the recent rebellion. I believe, however, that the claims of this spurious issue of Democratic doctrine have always been rejected, North and South, by the soundest and wisest of our political teachers.

Thirty-seven years ago, in 1830, the Senate became the theater of a memorable contest as to the true construction of the Constitution upon the relative powers of the Federal and State Governments. It was memorable from the character of the contestants—Webster, of vast intellect and resources, without a superior in powers of debate; and Hayne, who lacked no element of skill, ingenuity, or spirit, for the maintenance of a peculiar theory. Webster was the advocate of consolidation because he supported the protective interest, and that theory was deemed necessary to procure its establishment. Hayne was, on the contrary, the champion of a free market, in which the products of his own locality would find a return of their full value. Thus this debate was an exhibition of the best efforts of their greatest advocates in defense of their sectional interests. But a surpassing interest attaches to the contest from the subject of dispute. This was of the utmost practical importance, the great New Englander maintaining that the Federal Constitution is a government formed by the people of the United States in their aggregate capacity, as one mass; and that the only remedies for a State resisting Federal legislation as unconstitutional are those pointed out by the instrument itself, the decision of the Supreme Court, an amendment of the Constitution itself, or lastly, in cases not provided for by the instrument, the remedy of revolution. And the eminent Carolinian defending the opposite thesis, that the Constitution is a compact to which the States in their sovereign capacities are the parties; and that in virtue of the still subsisting State sovereignty, a State may nullify a law deemed by her unconstitutional, and thus check Federal action within her territory until Congress shall have obtained the necessary power

by an amendment of the compact by three fourths of the States.

It will be remembered that the Democratic administration of General Jackson was then in power, and how the threat of the State of South Carolina to carry into act the doctrines supported by Mr. Hayne was met by the Executive, speaking by the voice and pen of Edward Livingston, his Secretary of State. That learned and able jurist and patriotic statesman, in his speech in the Senate on Mr. Foot's resolutions, and afterward in President Jackson's proclamation in 1833, drew the line of distinction between the Federal and State authority in a manner which, till the recent outbreak, had commanded the general approbation of the country. In those great efforts, the force of whose logic has never been broken, it was demonstrated that the sovereignty of the people was divided; one portion of it being vested in the General Government for the purposes specified in the instrument of compact, the other retained for local self-government. No State possessed under the Constitution the right of nullifying by veto or withdrawal the action of the General Government; and this, whether the Constitution were the result of the action of the people as one body, or as separate communities. Mr. Livingston, however, rejected the doctrine of Webster, that the people of the United States had in their aggregate capacity established the General Government; for, to use his own language—

"It would lead to the most disastrous results; it would place three fourths of the States at the mercy of one fourth, and lead inevitably to a consolidated Government, and finally to monarchy, if the doctrine were generally admitted; and if partially so and opposed, to civil dissensions."

He argued that if both governments were created by the people as one people it would matter little in the estimation of those who received the doctrine whether any particular power was exerted by the Federal Government or the State. Upon various pleas it would be imagined for the benefit of the people that the General Government should exercise this power or that until the whole aggregate of the reserved powers should be taken possession of by the General Government and absorbed. It would be but a step from this to centralizing it in a single man. I refer to this debate to show that

the positions I have assumed were those recognized, not by the Democratic party in the person of President Jackson, but generally by men of all parties at the time.

The Jackson proclamation fixed the true interpretation of the Constitution; and, as thus interpreted, it subsists to us at this day after the country has passed the greatest struggle of which history bears record. The cardinal points of the Jackson construction I regard as of the highest importance for the welfare of this people, and I think should be held up for public recognition upon every fitting occasion. They fix in perpetuity upon the chart of our national policy the position of those dangerous rocks, the Scylla of consolidation on the one hand, and on the other the Charybdis of secession—between which alone are found free and safe soundings. But, whether deriving its origin from erroneous theory or from the just right of revolution misapplied, the result of the late contest has been adverse to those who rested it upon either. The rebellion has been suppressed; the oneness of the United States as a nation, and the extension of its Government over all the territory which formerly acknowledged its authority, have been effectually maintained.

It was upon the theory of this continued oneness that the war for the suppression of the rebellion was initiated and conducted to a successful issue. If secession was an accomplished fact, establishing the independence of the seceding States, then where was any legitimate cause of war, as arising from the act of secession? Obviously there was none. On the principles of the Declaration of Independence every nation has the right, unobstructed by any other, "to life, liberty, and the pursuit of happiness" in its own way; and the South should therefore have been permitted to "depart in peace." But the subsistence of the Union having been successfully asserted, how is it that the seceding States can be said, in any sense, to be out of the Union? Surely they cannot be so by reason of an ineffectual attempt at revolution. That they are not out of the Union is the great fact which the issue of the contest has decided. The southern States are, therefore, still integral parts of the Union, with the same rights as States, no

more, no less, as they had before the rebellion.

It must be admitted, indeed, that whatever was put in issue in this contest has been decided adversely to the unsuccessful party. The issue at the outset was the existence or non-existence of the Union. As the war progressed the institution of slavery was also made an issue as a war measure as one of the means allowed, it was maintained by the laws of war, to harass an enemy. When the rebel power was broken and their armies surrendered, they accepted the result; they abandoned the scheme of independence, separate and confederate; they consented to the extinction of slavery. They have done more. The States have resumed, as far as in them lies, their normal relations to the Federal Government by renewing their allegiance and electing Representatives to the national Legislature.

Now, while such is the condition of things as regards the rebel States, what is the course of the Government toward them? I shall speak first of the course pursued by Congress, and afterward of that adopted by the President, for unhappily the two are in conflict.

The course of Congress in regard to the rebel States is based upon the assumption that a reconstruction of the Government as to those States is what they are called upon to achieve. This assumes again that the old Government, the Constitution of 1789, has as to those States been destroyed. But if so, wherein or how? Not surely by the decisive success of the Union arms in establishing the existence and supremacy of the Federal charter; not by the surrender of the rebel armies—their implied abandonment of the issues for which they resorted to force, and their prompt return to obedience to the paramount law. The Government was not broken up by an attempted withdrawal and a claim to a State sovereignty and independence, which on an appeal to the sword the seceding States failed to establish. The congressional idea of reconstruction, therefore, proceeds upon an assumption not sustained by fact.

As growing out of this assumption, however, and consequent upon it, resort is had to another doctrine, that of an assumed forfeiture by the rebel States of their rights in the Union, which is held an all-sufficient justification of

the policy proposed. To any unsophisticated apprehension I need hardly urge that the application of any such doctrine is as utterly without constitutional warrant and as baseless as the idea of a dissolution of the Government for some purposes and not for all. Forfeiture as to States is not a constitutional penalty, and in a Government of defined powers like ours has no place. Forfeiture may be pretended and enforced where one of the contending parties is the superior of the other: but in our Government the members are all equal. It may consistently be applied by a monarch to a rebellious portion of his subjects; it may have place between independent powers in favor of the victor. It is unregulated by law, and is whatever the conqueror chooses to make it. It is the reckless assertion of the right of the strongest.

The Constitution does indeed provide for its alteration by submitting propositions for this purpose to the States, which shall be valid as amendments when ratified by three fourths of their number. But this means their voluntary ratification by three fourths of all the States, and not the exclusion of ten States from the enjoyment of their constitutional rights as such until, with their own consent or without, they shall have submitted to this forced ratification as a condition-precedent.

The imposition by the adhering States of conditions upon the seceding, while it implies a superiority in the former and is opposed to our system of government, is at the same time in gross and flagrant violation of the principles on which the war was professed to be waged. Attention has been too often called to those principles in this body and elsewhere for us to forget that the proclamation of President Lincoln at the beginning of the war demanded only the cessation of the rebellion; and that Congress, directly after the first battle of Bull Run, made by joint resolution that memorable declaration contained in the Crittenden resolution.

This purpose, thus distinctly announced at the beginning, was frequently repeated during its progress, both by the President and Congress and by our generals in the field. It was further declared in the Republican platform of 1864, and the unity of the nation was also

recognized by the passage of the bill apportioning Representatives in 1862. Now, with this record, how shall we acquit ourselves to the Army and Navy, to the world, and to our posterity, of the charge of deliberate unfairness, if we now, at the close of the war, assume it to have been waged for the purpose of spoliation and oppression? Would those gallant soldiers who gave victory to our arms have flocked to your standard with such alacrity of patriotic devotion, such recklessness of personal sacrifice and suffering, had you frankly told them at the outset that they were to fight for so unhallowed an object as this? I will not wrong them so much as for an instant to suppose them capable of such complicity in the national dishonor.

The cessation of resistance to the execution of the Federal laws and the abolition of slavery being the only terms, at any time during the war, required to be complied with by the rebels in order to their restoration to the Union, on the return of peace should we vary these terms? Is it consistent with our honor to set up new and exacting conditions after we have gotten the rebels in our power? Sir, I will yet trust the intelligence and virtue of this people to save the nation from such a humiliating situation as this.

I wish to look a moment at the principal of those conditions upon which Congress insists. They have passed over the President's veto certain laws and propositions of amendment to the Constitution, the terms of which they require to be complied with before the States of the South shall be again received into fellowship.

By the Freedmen's Bureau bill that institution was made a permanent establishment, with a field for its operations coextensive with the existence of freedmen. It would thus be as operative in Pennsylvania as in Virginia. The powers vested in this new tribunal are such as may well excite our most earnest solicitude. In all cases affecting a negro "military jurisdiction and protection" are required to be extended to him. This in criminal cases sets martial law and the officers of the bureau above the laws and officers of the States, and is a violation of the constitutional guarantees of security from arrest without warrant and of jury trial.

The system which is thus attempted to be legalized imposes an enormous addition to the burdens of the people, while the report of the commissioners appointed to examine into the condition of the freedmen shows the terrible abuses of which the bureau is the instrument, even toward those whom it proposed especially to benefit. While thus unjust to white and black race alike, it is founded upon a false principle, that of placing in the condition of dependents upon the Government four millions of thriftless population.

The first section of the amendment proposes to make citizens of all persons, regardless of race or color, born or naturalized, in this country; and it proposes penalties upon all who in any way attempt to abridge the privileges and immunities of citizens. How many and what are the privileges essentially belonging to citizens is a thing very undefined. If Congress has the right to declare who shall be citizens, it has the right at the same time to declare what shall be their privileges. The Constitution framed by our fathers left this matter with the States, only declaring that those qualified under the State laws to vote for the most numerous branch of the State Legislatures should be qualified to elect representatives to Congress. But Congress, now usurping the power from the States, while it makes citizens of whom it pleases, may also define their privileges. Thus under this amendment the elective franchise may at any time be declared one of those privileges when negro suffrage becomes unalterably fastened upon the country.

In framing our Federal system the States reserved to themselves the control of this matter of suffrage, as essential to the preservation of their freedom. In the exercise of the mass of powers retained by the States for their local government it was essential that they should determine who should be qualified participants; for if this could be done by any power outside of the States, their self-government, and consequently their freedom, would be no longer secure. That "republican form of government" guaranteed to the States by the Constitution would become an impracticable thing.

Self-government is the essence of republicanism, and to this effect was the language of Mr. Madison in the Convention. So long as

a State can determine who or what classes of its citizens shall have a voice in the selection of the State officers—of those who shall make and administer the laws—just so long its government is republican. But if this power be taken from it and lodged elsewhere, the republican character, and therefore the liberties of the States, have received a fatal blow. The annihilation of the State governments is by this privation effectually consummated. The local governments are thenceforward not even republican in form, and in this matter not to be republican in form is not to be so in substance. By thus forcing upon the southern States negro suffrage, it is proposed to raise the negro to an equality with the southern whites, who belong to that race which has thus far in all that elevates and dignifies humanity—in arts and arms and institutions of government—proved itself the foremost in this world. The incapacity of man for self-government has often been commented upon by the philosophic historian; and the republics of Greece and Rome, of modern Italy, and of attempts in that direction in England and France, have been pointed to as melancholy proofs of the fact. It has hitherto been supposed, even among ourselves, that free institutions could only live while supported by the intelligence and virtue of the people; but in the reckless rapidity of our republican progress we seem to have discovered that a democracy may well subsist where the people who composes it have neither of those principles to rest upon. It must not be forgotten that the whole number of votes of the States which it is meant to punish in this way is only fifty-three, while that of the other States is one hundred and ninety-two. The disparity alone should disarm fear and moderate exaction.

The Constitution, in section five of article first, provides that "each House shall be the judge of the elections, returns, and qualifications of its own members;" that is, whether they have been properly elected, and whether there is any constitutional or legal objection to them personally; this power only applies to the individual Representatives, which is a very different thing from Congress excluding whole States from representation upon condition of adopting a constitutional amendment which changes the basis of representation. There is

no warrant in the Constitution for such an exercise of tyranny. Had such a condition been insisted upon at the adoption of the Constitution, it must be admitted there would have been no Government. But if it could be supposed that the excluded States would accept the amendment, how dangerous is the principle which underlies it! If a party majority now can change the Constitution by forced amendments, what is to prevent another majority at a future day from changing it again? If a majority can now in this way force universal suffrage upon ten States in the absence of representation, why should not a majority hereafter require an equalization of State representation in the Senate and exclude New England, taxing her in the mean time until she shall give her consent?

New England, under the application of her own rule, might thus find herself suddenly stripped of five sixths of her representation in the higher branch of the national Legislature. While there is much in the New England character which no intelligent mind can fail to admire—while all bear willing tribute to her energy and thrift, to her indomitable will, her learning and large culture—yet there are few outside of her limits who do not feel compelled to abate largely their estimations of these qualities from their proneness to misdirection and disturbance of the public peace. Her characteristic activity of mind acknowledges nothing as settled, whether in religion, in science, in politics, or law, and exposes her in a special degree to these storms of fanaticism and party zeal which are apt to carry infinite mischief in their train. We cannot shut our eyes to the fact that, having heretofore profited so largely by shaping the legislation of the country to her own advantage, she is now, with concentrated energy, struggling to maintain that advantage even at the sacrifice of the union of the States. She dreads a full representation of the great agricultural South, acting in conjunction with the great agricultural Northwest and the commercial interests of New York and the States of the Pacific coast. These sections, representing in the main a community of interest, it is not only feared, but known, can give the law to the country; and thus will follow a readjustment of our in-

ternal revenue and the policy of our foreign commerce.

The conditions proposed by Congress, exhibiting such strong indications of their purpose and origin, such shameless outrage upon justice and every conservative principle, such usurpation of Federal powers, and such violation of State rights, could not be expected to be received without question, even by the Republican majority, if submitted in the regular way to the deliberation of each House separately. It was necessary to resort to revolutionary France for an instrument for the production of the monstrous scheme. In the "committee of safety" of the constituent assembly they were presented with a precedent for that of "reconstruction." Their designs not being of a nature to endure the open light of day, had to be matured in the mysterious secrecy of an extraordinary committee. Refractory members were to be crushed, and all who in any way opposed themselves to the purposes of the committee were to be relentlessly sacrificed. It cannot be denied that, if alien to our institutions, the machinery was at least admirably adapted to securing the unity and strength requisite for the success of such a policy of destruction.

So perfectly, indeed, is the policy of Congress adapted to break up the Union—to prevent the return of the country in all its parts under one government—that it is hard to avoid believing this to have been the object of it. The authors of this policy know well, by consulting their own breasts, that their southern brethren will never consent to accept such terms as these. They know it is requiring what they would themselves never consent to in like circumstances. While it is irreconcilable with the hypothesis of a still subsisting Union, and in violation of the rights guaranteed by the Constitution, which is its bond, to every State, it is admissible only on the supposition that the war was waged for subjugation, which yet Congress and the Executive during its progress most carefully disclaimed. It assumes that subjugation has been in fact effected, and that, with the insolent triumph of conquerors, we are now at perfect liberty to trample upon and oppress a fallen foe. Feeling that they have no support for their

course in the Federal compact, in common justice or reason, some of the leaders of this policy do not hesitate to avow their hatred of the Union and their determination that it shall never be restored. In this point of view their course is intelligible and consistent. But in assuming this ground they place themselves as much in the attitude of rebellion as the most arrant rebels whom they seek to humble. Others seek to justify their vindictive policy by resting its defense upon the rights of successful belligerents under the law of nations. It is true that, after much delay and great reluctance, the *de facto* secession was acknowledged, and belligerent rights and their consequences were conceded to the rebels. But this was only from the necessity of the case, and in so far as the public law was applicable to our situation. We had to maintain at the same time the integrity of the national Government, so that the belligerent rights conceded had relation only to the conduct of the war. It was, in our case, but *lex sub superiori lege*; and at the termination of the war the Constitution, the municipal law in all its vigor, resumed its sway, and the States, on again placing themselves in the constitutional relation to the Federal Government, were in the same instant reinstated in the rights reserved to them and their people by the common charter.

Under the municipal law the penalty was to be meted out, not to States, but to individuals. The extent of punishment thus to be inflicted was a matter for the consideration of courts and for the executioner of the law. It is idle, sir, to talk of punishing the rebels for their treason. The spirit of the age is against it. This vindictive spirit and purpose which characterizes the congressional measures has about it too much of that uncompromising intolerance of Cato the Censor, who, it will be remembered, concluded every speech which he made in the Senate—no matter how irrelevant the subject—with the savage declaration, "Carthage must be destroyed." As between foreign and rival States, and in a heathen age of the world, such an inexorable sentiment might receive some degree of toleration; but in a Christian age and country, and between different portions of the same people, between countrymen and brethren, surely the ill-disguised design expressed

here for the total annihilation of the South can be received only with abhorrence.

It is agreed by writers on public law that where great masses of people, actuated by a common impulse which they believe to be right, however erroneously, proceed to use force for the assertion of their principles, that these masses are not guilty of treason, morally or legally. No one is guilty of treason for obeying the Government *de facto*. The existence of a common sentiment so extensive, of a resistance so unanimous, supposes a cause. If the cause were just and good, its success relieved it of the character of treason; and whether good or bad its failure was a sufficient penalty. Without a recognition of the laws of war to govern the contest, our civil war on both sides would have been one of extermination. No prisoners would have been taken, no exchanges made. But the law of nations, the slow growth of civilization, interposes between belligerents, whether independent Powers or divided portions of the same Power, in favor of humanity, and to prevent the barbarous and useless effusion of blood. These laws have been constantly ameliorated under the progressive spirit of Christianity; and we find Montesquieu advocating their especial applicability in a republic, and writers like Hallam and Macaulay maintaining that these laws should have been strictly governed in the war of the great rebellion in England. Charles the First, says Macaulay, should not have been executed; and as little would he have been justified, in case of his success, in putting his adversaries to death. In the suppression of the Irish rebellion in 1848 by England we have an example of a wise clemency, aiming to heal the deep-seated discontents of a people, rather than standing upon the strict ground of legal right, to keep alive the fires of irritation by the exercise of a cruel and vindictive policy.

Far different from the revolutionary, unjust, vindictive, and unwise policy with which the Congress would deal with the rebel States is that which our firm and enlightened Executive has inaugurated. Peace having been restored by the submission of the rebels and such action in the seceding States as recognized the authority of the paramount law, his patriotic glance at

once apprehended the situation and the line of duty. The President no longer of a divided but a united country, he saw that it was not for him to "give up to party what was meant for mankind," but that the position called him to merge the partisan in the Chief Magistrate and the statesman. He might naturally desire to carry with him in his views the legislative coördinate department of the Government; but if they differed his duty was not the less clear. He was to obey the oath, which he had sworn, to maintain the Constitution of his country. He must be true to his bright record of consistent patriotism, exhibited throughout a long life passed in the service of the Government and in every official grade. He had private griefs enough to incline him to the measures of the most extreme radical. For the love of his country and her institutions he retained his position in the Senate when every other Senator of his section had withdrawn. He endured with stoical firmness the ruin of his private fortune and the unwearied persecution of open and secret foes.

Members of his own household had fallen upon the battle-field in defense of the cause which he had most at heart. Yet he swerved not. It was not that he hated secession less, but that he loved his country more. The moral grandeur which he has exhibited in such circumstances of peculiar trial is such as has been shown by few in the whole extent of history. "The just man, tenacious of his purpose," so handsomely eulogized by the Roman poet, the storm of partisan fury may beat upon him in vain. He may break beneath it, but he will never bend. Whether successful or unsuccessful in his object of giving once more peace and happiness to a distracted land, his merit is the same. He has met his own responsibilities with a clear perception, a determined will, and an unflinching breast. On the suppression by Cicero of the conspiracy of Cataline, it will be remembered that at the suggestion of Cato he was honored by the people with the title of the "father of his country." With signal propriety this title was bestowed upon that great and good man whose military success gave us existence as a nation. I submit, sir, that it belongs equally to him who saves his country from destruction.

Filled with a just apprehension of his position, its importance and duties, whatever obstacles may oppose their performance, the President, like Gustavus Vasa and William of Orange in like circumstances, I trust will "stem the current and march through the thick array." His fidelity and success in the past is an assurance of a glorious triumph in the future. But if in the night of our distress it should prove true that "republics are ungrateful," (since Cicero was banished after his deliverance of Rome from the grasp of Catiline, and Aristides driven from Greece because his exalted worth brought down upon him the vengeance of rivals and desperate men,) the historian must yet record that this man, whose whole life has been devoted to the elevation of the masses and the maintenance of the cause of industrial occupation, was chiefly instrumental in placing upon the statute-book an act of great public beneficence. Already under its practical workings one hundred thousand homes have been secured and settled on the public domain, and in the not far distant future the number will rise to a million homesteads, the smoke of whose cabins on the Mississippi, the Missouri, the Yellowstone, the Columbia, and the Arkansas, rising from firesides made happy by this kindly provision, will be so many enduring monuments to his memory and to his fame.

When the forces of the resisting States laid down their arms he recognized all their reserved rights and their equal rights in the federation. It was contended that the President, in this action toward the southern States, had exceeded the executive functions; that he had exercised power which belonged exclusively to the Legislature. He had, however, without incurring censure on that account, under laws already established, restored the mails and reopened the channels of commerce, and reestablished the courts. It was particularly objected that the President had no power "to make peace." But if the executive has not, what branch of the Government has? It is clear that the power is not vested in Congress; for a proposition offered in the Convention which framed the Constitution for "a concurrence of two thirds of the Senate to make treaties of peace without the concurrence of the President"

was voted down by a vote of eight States to three. (See Madison Papers, volume five of Elliott's Debates, pp. 524, 525.) Treaties of peace were therefore left as any other treaties, requiring in all cases the concurrence of the President. Making peace is therefore, under the Constitution, as much a presidential as a legislative function. It is, indeed, much more so, as the act is executive in its nature, and one for which a deliberative body, from its number and lack of unity, is unfit.

But the objection proceeds upon a mistake of the question; for it is not a case of making peace with a foreign Power. It is wholly one of internal administration, in which the municipal law alone governs, and in which the Constitution makes it the duty of the President to see that the laws are faithfully executed. The rebellion having been suppressed, the laws resumed their sway.

Chief among the rights to which the people of the seceding States were entitled upon their return to the Union were those of representation in both bodies of Congress. These were accordingly conceded by the President. An omission to concede them would have involved a plain violation of express provisions of the Constitution and of his official oath. By section four of article four—

"The United States shall guaranty to every State in this Union a republican form of government."

By section two of article one—

"The House of Representatives shall be composed of members chosen every second year by the people of the several States."

And by section three of the same article—

"The Senate of the United States shall be composed of two Senators from each State," &c.

Here was authority enough for one who had no ends to serve but those of country. Had he needed more it might have been found in the Farewell Address of the President who was first in the hearts of his countrymen. From that he would have received the lofty teaching that—

"The basis of our political system is the right of the people to make and to alter their constitutions of government; but the Constitution which at any time exists, till changed by an explicit and authentic act of the whole people, is sacredly obligatory upon all."

He might also, in the same rich legacy of patriotism and political wisdom, have read a lesson not less worthy of attention to another

department of the Government, which seeks, by consolidation of unauthorized power, to deprive whole States and communities of their guaranteed rights. The lesson is :

"If, in the opinion of the people, the distribution or modification of the constitutional powers be in any particular wrong, let it be corrected by an amendment in the way which the Constitution designates. But let there be no change by usurpation, for though this, in one instance, may be the instrument of good, it is the customary weapon by which free Governments are destroyed. The precedent must always greatly overbalance in permanent evil any partial or transient benefit which the use can at any time yield."

Sir, if there be any principle of democratic government more firmly established than any other in our history it is that of the inseparability of the rights of taxation and representation. We established by the success of our revolution that the home Government had no right to tax us without our consent, or in other words, without being heard by our representatives, and without having through them a voice in deciding the question of taxation. So great and fundamental was this right deemed that our fathers found in it sufficient justification for overturning their Government. It has been recognized as the basis of every Government, State and Federal, which they have framed since. From the reverence with which this right has been regarded in this country, and the immense struggles and sacrifices made here to maintain it, it may properly be called the American principle. Yet how strange is the spectacle we behold ! A dominant majority in the Legislature, while admitting the rebel States to be in the Union for the purpose of taxation, yet maintain that they are out of it for the purpose of representation.

You will remember, sir, that the Roman republic granted the full rights of citizenship even to the aliens of conquered provinces, and this regardless of the bitterness and obstinacy of their resistance to the standard of the republic. When once subdued and their defeat acknowledged, they were received into the enjoyment of equal rights with the inhabitants of the city itself. "I am a Roman citizen," was the talismanic formula which secured the inhabitant of distant Sicily protection against the extortions of a Verres as much as it did from any other injury the dweller upon the Seven Hills. And this was done, sir, in a

Government which was without a written constitution, from a sense of justice and policy only, and was the great secret why Rome retained her compacted strength while constantly extending her boundaries. Here, on the other hand, in a Government of defined powers, in a polity which is professedly one of self-government, the party which happens at a critical juncture to be possessed of the power denies self-government to the other, though by the common charter the rights of all are equal. It matters not, after peace is restored, that one of these parties has been in rebellion against the common Government, for the *status ante bellum* instantly revives.

Sir, it is impossible to apply the principles assumed by the majority here in a Government like ours without adopting the theory of the consolidation and centralization of the entire sovereignty of the people in the General Government. I have already occupied the attention of the House upon this subject, yet its importance at this juncture seems to demand some further remark. I fear, sir, that the difference is too little known or considered, the danger too little perceived or heeded ; yet no question is of such vital importance. No reader of our history can forget how jealous, at the formation of the Government, were the States of parting with any portion of their sovereignty. This jealousy was natural ; for so long as the States retained their full powers every individual possessed, in the authority of his State, the most ample protection for his private rights and for the correction of abuses, while he felt that his interests would receive the most careful attention in the local legislation. He did not feel that his welfare would be quite so well consulted if any of the functions of sovereignty were yielded by the State and deposited in the hands of agents not amenable to State authority, and, it might prove, regardless of individual rights and not sympathizing with individual interests. It was, therefore, only after a long struggle that the States consented to conferring upon a common Government such functions of sovereignty as could be best exercised by it for the general benefit of the whole. While they did so they were equally careful to secure themselves in the possession

of the remainder by inserting in the Federal Constitution the provision that—

"The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."—*Article 10, Amendments.*

Now, it is of the utmost importance that these boundaries should be preserved; that they should neither be intrenched upon by State action nor by an enlargement of the Federal authority a tittle beyond what is absolutely required to secure the objects set forth in the preamble to the Constitution. State sovereignty, except in so far as granted away by express stipulation, subsists in its full vigor, and should be guarded with the utmost vigilance. If State rights are absorbed and curtailed in the manner assumed by the amendment which confers upon the General Government the control of the right of suffrage, the individual is placed at a great distance from the guardianship of the sovereign authority, and his State becomes of no more importance in the Government than is a county as respects the government of the State.

The great future which spreads before the country demands for the fulfillment of our mission the preservation of our liberties in the purity in which they were established. The vastness of territory for which coming generations will have to legislate will appear from the consideration of a single fact in our history. It is the facility with which the Government, for reasons deemed expedient at the time, renounced by treaty with Great Britain a very tenable claim to the country lying between 49° and 54° 40', a territory sufficient for the formation of sixteen States as large as Pennsylvania. From the readiness with which so extensive a region, for reasons not imperative, was granted away may be understood the vast extent of that which still remains the property of the nation and is open for the reception of our institutions. America, comprising the States which now are and those yet to be, is the great theater of modern enterprise and political experiment. She must be either republican or despotic. If we yield our theory of State rights and union of limited powers, we surrender the great principle of free government, and may prepare, first for a limited mon-

archy in the shape of a consolidated government, and eventually for a despotism. Our safety and prosperity as a nation depend entirely upon the inflexible fidelity with which we adhere to and maintain the great boundaries of power, as I have endeavored to point them out. The Union is not a union of force. It cannot be preserved by force. It rests upon interest and the mutual attachment of the members.

When we look, sir, at the unexampled progress of our country in the past, in the limited portion of it brought under settlement, and consider the vast area still open for occupation and development, what powerful inducements do we not see for the preservation of the Union? Our territory, embracing an area of nearly three million square miles, is equal to that of Europe. In natural wealth and in the distribution of the great highways of intercourse afforded by water communication it surpasses any quarter of the globe. In its abundance of the precious metals and minerals, in coal, iron, lead, copper, and petroleum, the material of labor, it is the marvel of the world. Its agricultural capabilities, extending through every variety of climate and production which belong to the temperate zone, are equally unrivaled. It has been calculated that in ten years our product of the cereals will exceed those of England and France together; while a European population greater than that of either of those countries is supported by our cotton. Under the influence of our free institutions the development of our industry has kept pace with our natural advantages. We vie with the oldest and most civilized of existing nations in the products of the useful and ornamental arts, in valuable inventions, and in works of intellect and taste. To united America the world owes the steamboat, the electric telegraph, and the monitor. By the genius of an American the cable binds by electric ties the Eastern and Western hemispheres; and in another lustrum an iron band will connect the great oceans which wash the shores of our continent, and the patriot in the full exultation of his heart may stand upon the golden shores of the Pacific and there witness the new direction which will then be given to the great commercial current of the world.

We have upward of thirty thousand miles

of railroad, more than four times as much as England, and more than any other country. The Government has still a thousand million acres of unoccupied land, and our area is capable of supporting a population as great in number. Sir, it is in our power to realize all this, and more than our wildest dreams have pictured. It can be done, but only by preserving in their purity the institutions transmitted us by our fathers and now in our responsible keeping.

A war with foreign Powers sooner or later is inevitable. We have high authority for saying that nation will rise against nation. The struggle for empire, for commercial advantages, for the propagation of systems, religious and political, will forever go on. The evil passions and ambitions of men exist now as in the days of Cataline and the Cæsars. The very attempt to establish on this continent a purely popular Government is so revolutionary and dangerous as an example to the regal Governments across the water that they will sooner or later make a combined effort for its overthrow. This in itself should produce a unity of sentiment in the North for the restoration of fraternal relations.

In such a conflict the South would become a necessity. From the Capes of the Delaware to the Rio Grande are embraced the mouths of the great rivers. The revolution could never have been successful without her hearty coöperation, and without her gallant aid in 1812 we should have lost our country and her independence. We must not only secure to her equality in representation, but equal justice in every department of the administration of the Government. Without this there can be no fraternal relations, and we thus wickedly and blindly cast away that popular affection which is the great basis of our institutions and the bulwark of our defense and security. The English Government is the work of a thousand years, and although great and powerful, and in one sense eminently successful, yet it is maintained by the concentrated power of the House of Lords and by the army and navy. Our Government is still an experiment. Our population is sparse compared with the extent of our territory and the magnitude of our resources. While Belgium has a population of four hundred and thirty-two

to the square mile, and England three hundred and seventy-one, the United States have but ten. It requires no reach of vision to see in the not far distant future a change of this condition. From almost every country of Europe streams of emigration are directed to our shores. Our capacity to support a population equal to the most densely inhabited district of England or Germany must be admitted by all. To live and prosper, then, as a great Power in the future, and to avoid a repetition of the bloody and devastating conflict through which we have passed, equal and exact justice in maintaining this republican system are just as necessary as the two well-adjusted forces in maintaining the movements of the planetary world.

In the gloom which pervades the land, and the uncertainty which hangs like a pall over the future of our country, I feel deeply solicitous for the welfare of the State which I have the honor in part to represent. The preservation of the Union is as indispensable to the maintenance of her liberty and her future growth and development, as from her geographical position and the sturdy and virtuous character of her people she is indispensable to the maintenance of the Union itself. For I have no hesitation in saying there is not a district of country in the world of equal area in which nature has been so liberal in scattering her treasure. Her commerce finds an outlet to the ocean through the Capes of the Delaware; the great interior is filled with mountains of mineral, intersected with beautiful rivers and valleys; while her western slopes embrace the heads of the Ohio, and hold as it were in her grasp the keys of the great valley.

England may boast her Birmingham and her Sheffield. Already in the city of Pittsburg a successful rival is to be found to either. This great State alone is capable of sustaining a population of twenty million souls. There is really no limit to her capacity to produce. The value of her western coal-fields alone is beyond computation. The material for driving machinery is to be found at the base of every hill. All this is inseparably connected with the Union and a stable Government. We know the story of our colonial history and our struggle for independence and for the establishment of our present system of constitutional govern-

ment. Let it be remembered that revolution is a word popular in every language; and that decay is stamped on all the works of man. That the greatest of American writers, as a check to human ambition, has pointed to Westminster Abbey, which contains the tombs of so many illustrious Britons, as the "empire of death," where the greatest name perishes from record and recollection, and its "very monument becomes a ruin." Such is the fate of nations as well as of individuals. Greece, the early home of the arts and the sciences, owed her distinction to her republican institutions as well as to the republic of letters; but with civil dissension came corruption, and civil war wreaked its vengeance upon her fair fields and beautiful cities. The Turk has reveled amid her broken statuary and fallen columns. The clang of the saber in defense of her ancient liberties has long since ceased to be heard on the field of Marathon or at the base of the Acropolis. Her sun went down in the night of barbarism and savage debasement. Rome, a nation that laid

broad and deep the foundation of a lofty civilization, whose poets, orators, statesmen, and historians shone like the milky-path in the heavens, and whose works are models at the present day, yielded to a similar spirit, and her power and glory have long since departed.

"Time, war, flood, and fire
Have dealt upon the seven-hilled city's pride.
She saw her glories, star by star, expire."

Shall this noble experiment of free Government, this model Republic, in the morning of its existence be doomed to share a similar fate, and liberty find a grave in the land that has been crimsoned with the blood of her martyrs, and that contains within her bosom the ashes of her Washington? No! Let the young America rise superior to the shackles of party and sectional interest, and with renewed energy and patriotic devotion cling to the Constitution of our fathers as our only hope, and as Mr. Webster has so beautifully expressed it, as the mariner clings to the last plank when night and the tempest close around him.



